

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



June 16, 2003

Agenda ID #2384

TO: PARTIES OF RECORD IN INVESTIGATION 01-11-037

This is the draft decision of Administrative Law Judge (ALJ) Bushey. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:hkr

Attachment

Decision **DRAFT DECISION OF ALJ BUSHEY** (Mailed 6/16/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Order Instituting
Investigation on the Commission's own motion
into the operations and practices of William
Michael Gavin, an individual doing business as
Affordable Apartment Movers,

Respondent.

Investigation 01-11-037
(Filed November 29, 2001)

**OPINION MODIFYING DECISION 02-08-052 AND
IMPOSING ADDITIONAL SANCTIONS FOR VIOLATIONS
OF PUBLIC UTILITIES CODE AND COMMISSION REGULATIONS**

Summary

This decision grants the request of the Consumer Protection and Safety Division (CPSD) to modify Decision (D.) 02-08-052 to impose further sanctions for failure to comply with that decision.

Background

In D.02-08-052, the Commission found that Respondent, Michael Gavin, doing business as Affordable Apartment Movers (AAM or Respondent), had assessed charges in excess of verbal prices quoted, had failed to respond to claims for loss or damaged property, and in other ways had given poor service and behaved unprofessionally as specified in more detail in the Order Instituting Investigation (OII) and Findings of Fact 1 through 7 of that decision. The Commission ordered AAM to (1) comply with all laws and regulations applicable to Household Goods Carriers; (2) make all due reparations to

customers, within 60 days; and (3) pay a fine of \$26,000 to the Commission, for deposit in the General Fund of the State of California, but if all required restitution had been paid and AAM committed no further violation of law, then the fine would be reduced to \$6,500.

On April 7, 2003, CPSD filed a motion to modify D.02-08-052 and stated that AAM has not complied with the decision. Specifically, CPSD noted that AAM had not made payments toward the fine, had not completed the ordered restitution, and was unlawfully continuing to provide moving services to the public. CPSD requested that the Commission:

1. Permanently revoke, with prejudice, AAM's Household Goods Carrier Permit, File T-187,559;
2. Require that should AAM or its principals seek to obtain new authority as a household goods carrier then such a request must be done via the formal application process and that all outstanding issues raised by D.02-08-052 be addressed; and,
3. Require AAM to comply fully with D.02-08-052.

AAM did not respond to CPSD's motion.

Discussion

Pursuant to Pub. Util. Code § 1708, the Commission "may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it." Rule 47(h) of the Commission's Rules of Practice and Procedure (Rules) states that in response to a petition for modification, the Commission may modify the decision as requested or in a way consistent with the request, set the petition for further hearings, summarily deny the petition or take other appropriate action.

In the hearings leading up to D.02-08-052, AAM offered testimony that it had remedied its past violations and that it was fit to perform moving services in

California. Relying on these representations as mitigation for the violations, we imposed limited penalties and did not suspend AAM's operating authority. Subsequent events, as related by CPSD, however, demonstrate that our reliance was misplaced. AAM has conclusively demonstrated an inability or unwillingness to comply with California law and this Commission's orders and regulations. We, therefore, grant CPSD's motion and order the following:

1. The portions of D.02-08-052 that suspend some of the fine are rescinded. AAM's fine is \$26,000 and is payable immediately.
2. AAM's operating authority as a household goods carrier is permanently suspended, with prejudice. Any request for new operating authority by AAM or its principals must be made via the formal application process and must demonstrate compliance with D.02-08-052, as modified.
3. AAM shall immediately cease and desist providing or advertising to provide household goods moving services in California.
4. AAM shall comply with all applicable provisions of the Public Utilities Code and Commission regulations.

Comments on Draft Decision

The draft decision of Administrative Law Judge (ALJ) Maribeth A. Bushey in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7. Comments were filed on _____, and reply comments were filed on _____.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

Findings of Fact

1. Respondent has not complied with D.02-08-052, and such compliance was critical to the basis for that decision.

2. Respondent is unfit to conduct operations as a household goods carrier.
3. Respondent did not respond to CPSD's petition to modify D.02-08-052.

Conclusions of Law

1. Pub. Util. Code § 1708 and Rule 47(h) allow us to modify previous decisions.
2. Respondent's operating authority should be permanently revoked, with prejudice.
3. The Commission should modify D.02-08-052 to impose a fine of \$26,000.

O R D E R

IT IS ORDERED that Decision (D.) 02-08-052 is modified as follows:

1. The portions of D.02-08-052 that suspend some of the fine are rescinded. Michael Gavin, doing business as Affordable Apartment Movers (AAM) shall immediately pay a fine of \$26,000 to the Commission, for deposit in the General Fund of the State of California.
2. In addition to the sanctions set out in D.02-08-052, AAM's operating authority as a household goods carrier is permanently suspended, with prejudice. Any request for new operating authority by AAM or its principals must be made via the formal application process and must demonstrate compliance with D.02-08-052, as modified.
3. AAM shall comply with D.02-08-052, as modified.
4. AAM shall immediately cease and desist providing or advertising to provide household goods moving services in California.

5. AAM shall comply with all applicable provisions of the Public Utilities Code and Commission regulations.

6. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.